

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

LRS of Vasudeo v. Narendra Kumar & Ors.

S.B.CIVIL WRIT PETITION NO.147/2006
under Articles 226 and 227 of the
Constitution of India.

Date of Order : 27th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sajjan Singh]
Mr. Durga Ram] for the petitioners.
Mr. Jitendra Gang, for the respondents.

BY THE COURT :

In a suit for eviction from rented premises, an application was filed on 25.8.2004 by the defendant to permit him to summon certain witnesses in evidence. On 31.8.2004, when the application aforesaid was fixed for hearing, the defendant instead of pressing it produced Shri Vijay kumar (DW-7) as witness and his statements were recorded. Two other defence witnesses viz. Rajkumar and Ashok were also present in court on 31.8.2004 but their statements could not be recorded due to paucity of time.

The statements of Shri Rajkumar (DW-18) were recorded by the court on 21.9.2004. On 31.10.2004 an application was preferred by the defendant under Order

6 Rule 17 read with Section 151 CPC seeking amendment in written statement. The arguments on the application under Order 6 Rule 17 CPC were heard by the court on 13.12.2004 and the same stood accepted by an order dated 17.2.2005. After acceptance of the application referred above statements of Shri Vijay Kumar (DW-7) were recorded on 5.3.2005 and he was cross examined on 15.3.2005. On 26.5.2005 counsel for the defendant was not present and, therefore, the matter was adjourned and was fixed on 6.7.2005 for further proceedings. By the order dated 26.5.2005 the trial court while granting adjournment observed for expeditious disposal of the suit in view of the order dated 29.4.2004 passed by the Rajasthan High Court. The order dated 26.5.2005 is worth to be quoted :-

“ 26.5.05 वकील वादी श्री महेन्द्र मेहता उपस्थित।

वकील प्रतिवादी श्री हर्ष मेहता उपस्थित।

प्रकरण आज शहादत प्रतिवादी हेतु नियत हैं, लेकिन आज पहले वकील वादी के आने एवं वकील प्रतिवादी के नहीं आने से प्रकरण में शहादत प्रतिवादी नहीं ली जा सकी। प्रकरण अत्यन्त पुराना हैं एवं राजस्थान उच्च न्यायालय ने 29.4.04 को 6 माह में प्रकरण का निस्तारण करने का आदेश दिया था लेकिन प्रकरण का आज तक निस्तारण समय समय पर प्रार्थना पत्र पेश करने से नहीं हो सका। अतः मामले की प्रकृति एवं परिस्थितियों को देखते हुये आज की पेशी इस निर्देश के साथ इल्तवा की जाना उचित प्रतीत होती हैं कि आयन्दा तारीख पेशी पर सर्वप्रथम उपलब्ध अवसर पर वकील पक्षकारान मय गवाहान के उपस्थित होवे ताकि प्रकरण में शहादत प्रतिवादी ली जा सके किसी भी पक्षकार द्वारा कासीर रहने पर विपरीत आदेश के लिये उत्तरदायी होंगे।

वकील प्रतिवादी ने प्रार्थना पत्र पेश कर उदयपुर से बाहर जाने के कारण ग्रीष्मावकाश से पूर्व पेशी ली जाना सम्भव नहीं होना वर्णित किया हैं अतः प्रकरण में तारीख पेशी 6.7.05 नियत की जाती हैं उस दिन वकील पक्षकारान 11 ए एम तक आवश्यक रूप से उपस्थित हों। शहादत प्रतिवादी उपस्थित नहीं होने पर शहादत प्रतिवादी बन्द मानी जावेगी एवं वकील वादी के उपस्थित नहीं होने पर जिरह बन्द मानी जावेगी। वकील पक्षकारान आदेश से पाबन्द रहें। एवं उनसे अपेक्षा की जाती हैं कि प्रकरण में परिस्थितियों को देखते हुये प्रकरण के शीघ्र निस्तारण में सकारात्मक सहयोग करें। पत्रावली वास्ते शहादत प्रतिवादी में दिनांक 6.7.05 को पेश हो।"

On 6.7.2005 DW-7 Vijay Kumar was cross examined and on 13.7.2005 Shri Ashok Kumar Jain and Sushil Kumar were cross examined by counsel for the plaintiff. An another defence witness Shri Manakchand was cross examined on 14.7.2005 and thereafter evidence of the defendant was closed by the court.

On 15.9.2005 an application under Section 151 CPC was filed on behalf of the defendant to stay proceedings in the suit on the count that a writ petition was then pending before the Rajasthan High Court giving challenge to some order dated 5.3.1998 passed by the trial court in the suit. The trial court rejected the application on the count that no interim order was passed by the High Court restraining it from proceeding further with the suit. The suit was, therefore, fixed for arguments on 18.10.2005. The 18.10.2005 was declared as Holiday, therefore, the matter was taken up by the court on 12.11.2005.

On 12.11.2005 an application under Sections 151 and 153 CPC was again preferred on behalf of the defendant for passing an order on the application dated 25.8.2004 which was pertaining to call officers of M/s Sudarshan Chit India Ltd. and ICICI Bank, Udaipur Branch, Udaipur as defence witnesses. Learned trial court by order dated 20.12.2005 rejected the application by holding that the defendant never pressed the application dated 25.8.2004 and as such after closure of defence evidence no order on the application dated 25.8.2004 is required to be passed. Hence instant petition for writ is preferred before this Court under Article 227 of the Constitution of India.

It is contended by counsel for the petitioners that the application preferred on 25.8.2004 pertains to calling defence witnesses who are quite material and relevant for adjudication of present cause, therefore, the trial court while treating the application dated 25.8.2004 as an application not pressed, committed jurisdictional error.

Heard counsel for the parties and perused the record.

From the order impugned and from perusal of order sheets it reveals that the suit in question is

pending before the trial court from last more than two decades. It also reveals that in last two years the matter was adjourned at the request of defendant on various occasions irrespective of the fact that this Court by order dated 29.4.2004 directed the trial court to complete the proceedings and dispose of the suit within a period of six months. The trial court allowed sufficient opportunity to defendant to produce witnesses in defence. The application dated 25.8.2004 was filed by the defendant to call two persons in defence but from perusal of the order sheets of proceedings it is apparent that no effort was ever made to get an order on the application aforesaid, though after 25.8.2004, number of other witnesses were produced in defence. The defendant also made an amendment in written statement during this period but no care was taken to press the application dated 25.8.2004. It appears that the application dated 25.8.2004 was intentionally kept unnoticed by the defendant to use it at some other point for getting the proceedings prolonged. The trial court after considering all facts concluded that the application dated 25.8.2004 was never pressed by the defendant and, therefore, the same is required to be treated rejected.

I am of the considered opinion that no error at all is committed by the trial court which may warrant interference of this Court under Article 227

of the Constitution of India. The order impugned does not suffer from any legal error which may justify interference of this Court under Article 227 of the Constitution of India. The suit is quite old one. It requires expeditious disposal and court should always be vigilant enough in seeing that no party be permitted to prolong legal proceedings. In the present case from facts it appears that the defendant for obvious reasons is interested in prolonging the suit proceedings. The trial court after considering all available facts rightly held that the defendant never pressed the application.

Accordingly the writ petition is dismissed. It is desirable to direct the trial court to hear and dispose of the suit at earliest as far as possible within a period of three months from today.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.